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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/672,368      | 09/26/2003  | Susan Litherland     | 1391-R-02           | 3027             |

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EXAMINER

POPOVICS, ROBERT J

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1724

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/672,368 | <b>Applicant(s)</b><br>LITHERLAND ET AL. |  |
|                              | <b>Examiner</b><br>Robert J Popovics | <b>Art Unit</b><br>1724                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 16-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to a Pumping System, classified in class 166, subclass 372.
- II. Claims 18-21, drawn to a Method of Material Remediation, classified in class 210, subclass 747.
- III. Claims 22-23, drawn to a Windmill having a Sliding Stroke Reducer, classified in class 416, subclass 9.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group II and Group I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process, such as in one where there is only a single material being removed from the ground and there is no other material layer present.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II and vice versa, restriction for examination purposes as indicated is proper.

Inventions of Group III and Groups 1 & 2 are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01).

Art Unit: 1724

This application contains claims directed to the following patentably distinct species of the claimed invention:

| Species | Means for Providing Power |
|---------|---------------------------|
| I       | Windmill                  |
| II      | Peristaltic Pump          |

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR

1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

During a telephone conversation with *Ms. Joan Kluger, Esq.*, on September 22, 2004, a provisional election was made *without* traverse to prosecute the invention of Group I and Species I, claims 1-3 and 5-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4 and 16-23 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how Applicant intends claim 6 to further limit the structure of the apparatus claim from which it depends. See MPEP Section 2115.

Claims 11-12 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how Applicant intends claims 11 and 12 to further limit the structure of the apparatus claim from which they depend. It is unclear what specific structure is required to accomplish the stated function. With respect to claim 14, it is unclear how Applicant intends the recitation "*wherein at least one of the one or more sensors is monitored remotely*" is intended to further limit the structure of the apparatus claim from which it depends.

Claims 1-3, 5-8 and 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission

Art Unit: 1724

amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: *"a transport pipe to transport removed material out of the system"* (i.e., the subject matter of Claim 9). Absent a transport pipe, it appears that the disclosed remediation could not be accomplished.

Claims 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the claimed *"sensors"* recited in Claim 13 sense. The recitation *"to monitor the system and/or environmental parameters"* is broad to the point of indefiniteness. In claim 15, it is unclear what the *"one or more remotely operated switches"* control. Moreover, claims 13-15 fail to provide notice to potential infringers as to what constitutes infringement.

Claims 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationship/location of the sensors relative to the rest of the system.

Claims 11-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has not disclosed how the subject matter of claims 11-12 is accomplished.

## ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed *sensors* must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

## ***Claim Rejections - 35 USC § 102***

Claims 1,2,5,6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Breslin (US 5,474,685). See recovery unit 2 (col. 3, lines 55-65) and pump 26.

Art Unit: 1724

### ***Claim Rejections - 35 USC § 103***

Claims 7 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breslin (US 5,474,685). Claim 7 of Breslin discloses the use of polypropylene. It is submitted that the use of HDPE would have been obvious to one of ordinary skill in the art, in view of this teaching. With respect to claims 13-15, the use of sensors (for example, to monitor level, capacitance, pressure, flowrate, temperature, etc.) is notoriously well known in the art. Accordingly, it is submitted that use of sensors and remote control switches/monitoring devices, would have been obvious.

Claims 3 rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Breslin (US 5,474,685) and Cunningham (US 4,249,867). Breslin does not expressly disclose the use of a windmill. Cunningham discloses the use of a windmill to power a pump. In view of this disclosure, it would have been obvious to one skilled in the art to employ a windmill to power the system of Breslin.

It is requested that Applicant cancel the non-elected claims in the next response. Any inquiry concerning this communication should be directed to Robert J. Popovics at telephone number (571) 272-1164.

A handwritten signature in black ink, appearing to read 'Robert J. Popovics', with a stylized flourish underneath.

Robert James Popovics  
Primary Examiner  
Art Unit 1724

September 23, 2004